

04-27613

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Chapter 13 Case:
Case Number BKY 04-30014-DDO

James Johnson
Aimee Johnson,

Debtor(s)

NOTICE OF HEARING AND MOTION
FOR RELIEF FROM STAY

To: The Debtor and other entities specified in Local Rule 9013-3(a).

1. Mortgage Electronic Registration Systems, Inc. moves the Court for relief requested below and gives Notice of Hearing.

2. The Court will hold a Hearing on this motion at 9:30 a.m., on September 1, 2004, in Courtroom No. 228A, at the United States Courthouse, at 316 North Robert Street, in St. Paul, Minnesota.

3. Any response to this motion must be filed and delivered not later than August 27, 2004, which is three days before the time set for the hearing(excluding Saturdays, Sundays, and holidays), or filed and served by mail not later than August 23, 2004, which is seven days before the time set for the hearing(excluding Saturdays, Sundays and holidays). UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.

4. This court has jurisdiction over this motion pursuant to 28 U.S.C. §§157 and 1334, Bankruptcy Rule 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this Chapter 13 case was filed on January 2, 2004. The case is now pending in this court.

5. This Motion arises under 11 U.S.C. §362 and Bankruptcy Rule 4001. This motion is filed under Bankruptcy Rule 9014 and Local Rules 9013-1 - 9019-1(d). Movant Requests Relief with respect to exempt property of the debtor subject to a lien.

6. On December 1, 1998, James W. Johnson and Aimee C. Johnson made, executed and delivered to Chase Manhattan Mortgage Corporation their Note (hereinafter referred to as the "Note"), in the original principal amount of \$107,600.00 bearing interest from the date thereof at the rate of 6.375% per annum until paid, payable in monthly installments of \$697.89 commencing on January 1, 1999 and on the first day of each and every calendar month

thereafter until the principal and interest were fully paid. A copy of the Note is attached hereto as Exhibit "A" and made a part thereof by reference.

7. On December 1, 1998, to secure the payment of the Note, James W. Johnson and Aimee C. Johnson executed and delivered to Chase Manhattan Mortgage Corporation their Mortgage (hereinafter referred to as the "Mortgage"), mortgaging and conveying certain real estate in Dakota County, Minnesota, legally described as follows:

Lot 3, Block 2, The Meadows Second Addition

which property has an address of: 9961 West 207th Street, Lakeville, MN 55044. The mortgage was filed for record in the office of the Recorder, County of Dakota, on December 22, 1998, as Document No.1561017, and was subsequently assigned to Movant by assignment of mortgage. A copy of the mortgage and assignment are attached hereto as Exhibit "B" and made a part hereof by reference.

8. The debtors have filed a modified plan dated March 2, 2004, which was confirmed by subsequent Court Order. The plan provided, among other things that:

"5. Home Mortgages In Default [§1322(b)(5)] - The trustee will cure defaults on claims secured only by a security interest in real property that is the debtor's principal residence as follows. The debtor will maintain the regular payments which come due after that date the petition was filed. The creditors will retain their liens. The amounts of default are estimates only. The trustee will pay the actual amounts of default.

9. Notwithstanding the foregoing provisions of said plan, the debtors have not maintained current payments with respect to said note and mortgage, while this case is pending.

10. Debtors are in arrearage for monthly payments as shown below. The last payment received from Debtors was applied to the May, 2004 post-petition payment as that was the next payment due. Post-petition arrearage include the following:

3 payments @ \$909.14	\$2,727.42
Accrued late charges	227.30
Property Inspections	10.75
Suspense Balance	-227.58
Attorneys Fees & Costs	<u>700.00</u>
TOTAL POST-PETITION	\$3,437.89

Through Debtors' failure to make current post-petition payments, amounts currently due and owing include the following:

Principal	\$100,271.64
Interest	1,798.38
Accumulated late fees	227.30
Property inspections	10.75
Suspense Balance	-227.58
Attorneys Fees & Costs	<u>969.00</u>
TOTAL	\$103,049.49

11. Debtors have claimed said mortgaged property as exempt

pursuant to MSA 510.01.

12. By reason of the foregoing, good cause exists to lift the automatic stay imposed by 11 USC section 362 to allow Movant to pursue its remedies under State Law.

13. **This is an attempt to collect a debt and any information obtained will be used for that purpose.** This notice is required by the provisions of the Fair Debt Collection Practices Act and does not imply that we are attempting to collect money from anyone who has discharged the debt under the Bankruptcy Laws of the United States.

Wherefore, Mortgage Electronic Registration Systems, Inc. moves the court:

1. For an Order granting creditor relief from the automatic stay of 11 USC section 362.

2. For such other and further relief as the Court finds just and proper.

Dated: 8-9-01.

Signed: /s/ Nancy A. Nordmeyer

SHAPIRO & NORDMEYER, L.L.P.
Nancy A. Nordmeyer-121356
Lawrence P. Zielke-152559
Attorney for movant
7300 Metro Boulevard #390
Edina, MN 55439-2306
(952) 831-4060

VERIFICATION

I, Cindy Hystad, the Asst. Secretary for Washington Mutual Bank, F.A. the authorized servicer for movant, the movant named in the foregoing notice of hearing and motion, declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Executed on: 8-6-01

Signed: [Signature]

Washington Mutual Bank, F.A.
8120 Nations Way, Bldg 100
Jacksonville, FL 32256



NOTE

66007062
1660070620

BURNSVILLE MN
December 1, 1998
9961 W 207TH ST, LAKEVILLE, MN 55044

City, State
Street
Property Address

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$ 107,600.00
One Hundred Seven Thousand, Six Hundred and 00/100
(this amount is called "principal"), plus interest, to the order of the Lender. The Lender is

CHASE MANHATTAN MORTGAGE CORPORATION
a corporation organized and existing under the laws of the State of New Jersey
I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to
receive payments under this Note is called the "Note Holder."

2. INTEREST

Interest will be charged on unpaid principal until the full amount of principal has been paid. I will pay interest at a yearly rate
of Six and Three-Quarters percent 6 3/4 %.

The interest rate required by this Section 2 is the rate I will pay both before and after any default described in Section 6(B)
of this Note.

3. PAYMENTS**(A) Time and Place of Payments**

I will pay principal and interest by making payments every month.

I will make my monthly payments on the first day of each month beginning on January 1, 1999

I will make these payments every month until I have paid all of the principal and interest and any other charges described below that
I may owe under this Note. My monthly payments will be applied to interest before principal. If, on

December 1, 2028

I still owe amounts under this Note, I will pay those amounts in full on that date.

which is called the "maturity date."

I will make my monthly payments at 200 OLD WILSON BRIDGE RD
or at a different place if required by the Note Holder. WORTHINGTON OH 43085

(B) Amount of Monthly Payments

My monthly payment will be in the amount of U.S.\$ 697.89
Six Hundred Ninety-Seven and 89/100

4. BORROWER'S RIGHT TO PREPAY

I have the right to make payments of principal at any time before they are due. A payment of principal only is known as a
"prepayment." When I make a prepayment I will tell the Note Holder in writing that I am doing so.

I may make a full prepayment or partial prepayments without paying any prepayment charge. The Note Holder will use all of
my prepayments to reduce the amount of principal that I owe under this Note. If I make a partial prepayment, there will be no
changes in the due date or in the amount of my monthly payment unless the Note Holder agrees in writing to those changes.

5. LOAN CHARGES

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan
charges collected or to be collected in connection with this loan exceed the permitted limits, then: (i) any such loan charge shall be
reduced by the amount necessary to reduce the charge to the permitted limit; and (ii) any sums already collected from me which
exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the principal I owe
under this Note or by making a direct payment to me. If a refund reduces principal, the reduction will be treated as a partial
prepayment.

6. BORROWER'S FAILURE TO PAY AS REQUIRED**(A) Late Charge for Overdue Payments**

If the Note Holder has not received the full amount of any monthly payment by the end of fifteen (15) calendar days after the
date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5%
of my overdue payment of principal and interest. I will pay this late charge promptly but only once on each late payment.

(B) Default

If I do not pay the full amount of each monthly payment on the date it is due, I will be in default.

(C) Notice of Default

If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain
date, the Note Holder may require me to pay immediately the full amount of principal which has not been paid and all the interest
that I owe on that amount. That date must be at least 30 days after the date on which the notice is delivered or mailed to me.

(D) No Waiver By Note Holder

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the
Note Holder will still have the right to do so if I am in default at a later time.

(E) Payment of Note Holder's Costs and Expenses

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid
back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses
include, for example, reasonable attorneys' fees.

7. GIVING OF NOTICES

Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by

1561017

OFFICE OF THE COUNTY RECORDER
DAKOTA COUNTY, MINNESOTA
CERTIFIED THAT THE WITHIN INSTRUMENT
WAS RECORDED IN THIS OFFICE ON AND AT
10:32 DEC 22 A 10:32

1561017

DOC. NO. 1561017
JOEL T. BECKMAN, COUNTY RECORDER
BY: *[Signature]* Deputy
FEE 15.00 SURCHARGE 4.50
CASH ☐ CHECK ☐ ESCROW ☒

WELL ☐ CHARGE ☐
CHARGE TO: _____
O/R _____

DO NOT REMOVE

ATI TITLE

340 1300
12/21/1998 09:46:28 417073
THOMAS V. JOHNSON, DAKOTA COUNTY TREAS.
REGISTRATION TAX 247.48
COUNTY CONSERVATION FEE 5.00
RECEIPT NUMBER 35962

1561017

66007062
1660070620

MORTGAGE

THIS MORTGAGE ("Security Instrument") is given on December 1, 1998

The mortgagor is
JAMES W. JOHNSON,
AIMEE C JOHNSON, HUSBAND & WIFE

("Borrower").

This Security Instrument is given to
CHASE MANHATTAN MORTGAGE CORPORATION
which is organized and existing under the laws of the State of New Jersey, and whose address is
343 THORNALL ST EDISON, NJ 08837 ("Lender").

Borrower owes Lender the principal sum of
One Hundred Seven Thousand, Six Hundred and 00/100 Dollars
(U.S. \$ 107,600.00). This debt is evidenced by Borrower's note dated the same date as this Security
Instrument ("Note"), which provides for monthly payments, with the full debt, if not paid earlier, due and payable on
December 1, 2028 and for interest at the yearly rate of 6.750 percent.

This Security Instrument secures to Lender: (a) the repayment of the debt evidenced by the Note, with interest, and all renewals,
extensions and modifications of the Note; (b) the payment of all other sums, with interest, advanced under Paragraph 7 to protect
the security of this Security Instrument; and (c) the performance of Borrower's covenants and agreements under this Security
Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to Lender, with power of sale, the
following described property located in

DAKOTA

County, Minnesota:

~~See Attached Legal Description~~

Lot 3, Block 2, The Meadows Second
Addition

which has the address of
9961 W 207TH ST, LAKEVILLE, MN 55044

("Property Address");

This instrument was prepared by: KRISTIN ALBRECHT

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and
fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument.
All of the foregoing is referred to in this Security Instrument as the "Property".

RECEIVED

Form 3024 9/90

DEC 10 1998

1903485

OFFICE OF THE COUNTY RECORDER
DAKOTA COUNTY, MINNESOTA
CERTIFIED THAT THE WITHIN INSTRUMENT
WAS RECORDED IN THIS OFFICE ON AND AT

2002 JUN -6 A 9:00

1903485

DOC. NO.

JOEL T. BECKMAN COUNTY RECORDER

By: *[Signature]* Deputy

FEE: 5.00

SURCHARGE

CASH ☐ CHECK ☒ ESCROW ☐WELL ☐ CHARGE ☐

CHARGE TO:

O/R

DO NOT REMOVE

Homeside Lending

Loan No. 1273226-8 Pool No. L36003CH Other Co. Egan No. 1660070620
THIS DOCUMENT WAS PREPARED BY AND WHEN RECORDED MAIL TO:
HOMESIDE LENDING, INC., 7301 BAYMEADOWS WAY, JACKSONVILLE, FLORIDA 32256
ATTN: ELDE BOLATETE - MR-RA

1903485

ASSIGNMENT OF MORTGAGE/DEED OF TRUST

For good and valuable consideration, the sufficiency of which is hereby acknowledged, the undersigned,

CHASE MANHATTAN MORTGAGE CORPORATION, A NEW JERSEY CORPORATION

whose address is 3415 VISION DRIVE COLUMBUS, OHIO 43219

(Assignor)

By these presents does convey, grant, bargain, sell, assign, transfer and set over to:

**MORTGAGE ELECTRONIC REGISTRATION SYSTEM, INC., A DELAWARE CORPORATION, AS NOMINEE
FOR HOMESIDE LENDING, INC., ITS SUCCESSORS AND ASSIGNS**

whose address is P.O. BOX 2026/4318 MILLER RD. FLINT, MICHIGAN 48501-2026

(Assignee)

the described Mortgage/Deed of Trust, together with the certain note(s) described therein with all interest, all liens and any rights due or to become due thereon.

Said Mortgage/Deed of Trust is recorded in the State of MINNESOTA, County of DAKOTA.

Official Records on: 12/22/1998 Original Loan Amount: \$107,600.00

Mortgage Date: 12/01/1998

Original Mortgagor: JAMES W JOHNSON, AIMEE C JOHNSON

Doc. #:

Instr. #: 1561017

Cert. #:

Book:

Page:

Legal:

Mortgagee: CHASE MANHATTAN MORTGAGE CORPORATION

Address: 9961 W 207TH ST, LAKEVILLE, MN 55044

Date: 12/15/2000

CHASE MANHATTAN MORTGAGE CORPORATION, A
NEW JERSEY CORPORATION BY MERGER



[Signature]
JANET E. KOENIG, VICE PRESIDENT

STATE of FLORIDA, COUNTY of DUVAL

The foregoing instrument was acknowledged before me this 15th day of December, 2000 by JANET E. KOENIG, VICE PRESIDENT of CHASE MANHATTAN MORTGAGE CORPORATION, A NEW JERSEY CORPORATION, 3415 VISION DRIVE, COLUMBUS, OHIO 43219, A NEW JERSEY Corporation, on behalf of the corporation. He/She is personally known to me and did take an oath.

[Signature]
GAIL L. BROOKS, Notary Public

State of FLORIDA at Large, My Commission Expires:



Gail L. Brooks
MY COMMISSION # CC787220 EXPIRES
November 1, 2002
BONDED THRU TROY FARM INSURANCE, INC.

MIN: 100010980005295042

03/14/2002 GWEN AUSTIN Batch #: 10 SaleID: CHS122

MERS PHONE: 1-888-679-6377

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Case No. 04-30014-DDO

Chapter 13

James Johnson
Aimee Johnson,

Debtor(s)

MEMORANDUM OF LAW

Mortgage Electronic Registration Systems, Inc. ("Movant"), submits this memorandum of law in support of its motion for relief from the stay in the above-entitled matter.

FACTS

Movant holds a valid, duly perfected mortgage on real property owned by the Debtors. On the date this case was filed, the Debtor(s) were delinquent in respect of payments due under the note and mortgage. Since this case was filed, Debtor(s) are in arrears in the total amount of \$3,437.89.

ARGUMENT

1. Under Section 362.(d)(1) of the Bankruptcy Code, relief from the automatic stay shall be granted upon request of a creditor "for cause, including the lack of adequate protection of an interest in property of such creditor." 11 U.S.C. Sec. 362 (d) (1). The Debtor(s) in this case have failed to make the payments required by the note and mortgage for a period of more than two months. Debtor(s) have not otherwise provided Movant with adequate protection of its interest in the property. Such circumstances constitute cause, within the meaning of Section 362 (d) (1), justifying relief from the stay. In Re Video East, Inc., 41 B. R. 176 (Bkrtcy. E. D. Pa. 1984); In Re Frascatore, 33 B. R. 687 (Bkrtcy. E. D. Pa. 1983).

2. Pursuant to Section 362 (d) (2) of the Bankruptcy Code, relief from the stay is also appropriate where Debtor(s) have no equity in the subject property and the property is not necessary to an effective reorganization. 11 U.S.C. Sec. 362 (d) (2). See, In Re Geller, 55B.R. 970 (Bkrtcy. D. N. H. 1983). In the present case the balance due Movant on the note and mortgage is \$103,049.49. [The property is encumbered by a second mortgage in favor of Associated Bank in the approximate amount of \$51,400.00.]

Accordingly, Movant is entitled to an order terminating the stay and authorizing it to foreclose its mortgage on the property.

Dated: _____

8.9.01

Respectfully submitted,
SHAPIRO & NORDMEYER, L.L.P.

By: /e/ Nancy A. Nordmeyer
Nancy A. Nordmeyer-121356
Lawrence P. Zielke-152559
Attorney for Movant
7300 Metro Boulevard #390
Edina, MN 55439-2306
(952) 831-4060

SWORN CERTIFICATE OF SERVICE

STATE OF MINNESOTA)
) SS
COUNTY OF HENNEPIN)

I, **Stephanie Pilegaard** says that on August 9, 2004, I mailed copies of the annexed Memorandum of Law, Proposed Order for Relief from Stay, Notice of Hearing and Motion for Relief from Stay and Certificate of Service on the following interested parties at their last known address, by mailing to them, via first class mail, a copy thereof, enclosed in an envelope, postage prepaid and by depositing the same in the post office at Edina, Minnesota.

James Johnson
9961 207th Street West
Lakeville, MN 55044

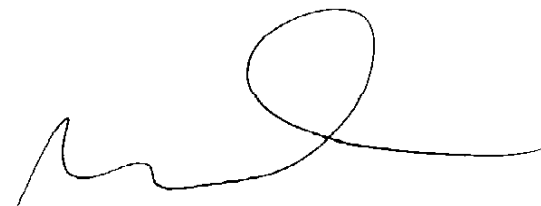
Aimee Johnson
9961 270th Street West
Lakeville, MN 55044

Richard Pearson, Esq.
P.O. Box 120088
New Brighton, MN 55112

Jasmine Z. Keller, Trustee
12 South 6th Street, #310
Minneapolis, MN 55402

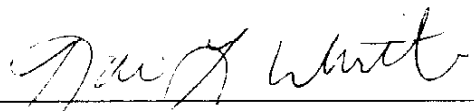
U.S. Trustee
1015 U.S. Courthouse
300 South 4th St.
Minneapolis, MN 55415

Associated Bank
PO Box 2926
Milwaukee, WI 53201-2926

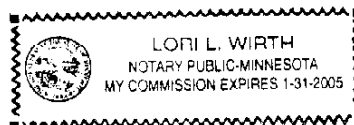


Stephanie Pilegaard

Subscribed and sworn to before me August 9, 2004.



Notary



04-27613
12732268

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Case Number BKY 04-30014-DDO

James Johnson
Aimee Johnson,
Debtor(s)

ORDER FOR RELIEF FROM STAY

The above-entitled matter came for hearing on September 1, 2004.

THIS CAUSE coming to be heard on the Motion of Mortgage Electronic Registration Systems, Inc., a creditor in the proceeding, the Court having jurisdiction, due notice having been given, and the Court having been advised in the premises;

IT IS HEREBY ORDERED,

That the automatic stay heretofore entered in this case is modified to the extent necessary to allow Mortgage Electronic Registration Systems, Inc., its successors and/or assigns, to foreclose, in accordance with State Law, the mortgage on the real property commonly known as:

Lot 3, Block 2, The Meadows Second Addition

NOTWITHSTANDING Federal Rule of Bankruptcy Procedure 4001 (a)(3), this order is effective immediately.

Dated: _____

BY THE COURT:

Judge of Bankruptcy Court